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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,443	08/30/2003	Brian L. McMurray	1373-002	8744

4678 7590 04/21/2006

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EXAMINER
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WORRELL JR, LARRY D

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/651,443

Applicant(s)

MCMURRAY, BRIAN L.

Examiner

Danny Worrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-11 and 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by McLarty III et al (5533789).

The disclosure of McLarty III et al (5533789) teaches a knitted color-fast material to the extent claimed including a first component (30) with substantial stretch properties and a second component (34) with substantially lower stretch properties than those of the first component. The material is a fabric manufactured by knitting and the components are dyed prior to fabric formation for providing a material having a color-fastness and color-uniformity in both stretched and relaxed states. Note that the second material (34) is solution dyed. See column 3, lines 44-48.

### ***Claim Rejections - 35 USC § 103***

Claims 3 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McLarty III (5533789).

The disclosure of McLarty III et al teaches a knitted colorfast material as claimed except for the first component being solution dyed. It would have been obvious at the time the invention

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was made to provide the first yarn component as a solution dyed component so that the dye is distributed evenly throughout the yarn rather generally on the yarn surface.

### ***Response to Arguments***

Applicant's arguments filed 9/21/05 have been fully considered but they are not persuasive. Applicant argues that the inclusion a wrapped yarn in the reference of McLarty III prevents the art from reading applicant's claims. The examiner disagrees. The fact that the yarn of McLarty is made up of multiple components does not prevent it from being designated as a stretch yarn dyed before fabricating the fabric. Concerning the "consisting essentially of" recitation, MPEP 2111.03 sets forth that while the transitional phrase "consisting essentially of" limits the scope of the claim to the specified material or steps and those that do not materially affect the basic and novel characteristics of the claimed invention, for the purposes of applying prior art, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, the phrase "consisting essentially of" will be construed as meaning comprising.

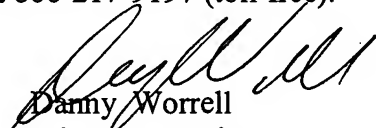
### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danny Worrell whose telephone number is 571/272-5997. The examiner can normally be reached on Tuesday-Friday.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Danny Worrell  
Primary Examiner  
Art Unit 3765

LDW